UTILITY PATENT [redacted] Docket No. P-US-TN1444

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: **Roger Q. SMITH**

#13/Supp. Response R. Tyson 5/21/01

Serial No.: **09/153,621** Examiner: **T. Dinh**

Filed: **September 15, 1998** Group Art Unit: **2841**

For: **HEAVY-DUTY AUDIO EQUIPMENT**

Assistant Commissioner for Patents
Washington, DC 20231

RESPONSE TO OFFICE ACTION

I, Adan Ayala, Reg. No. 38,373, certify that this correspondence is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to the Commissioner of Patents and Trademarks, Washington DC 20231 on 5-8-01

5/22/01

Adan Ayala

Dear Sir:

This is in response to the Office Action mailed March 14, 2001.

Currently in the application are Claims 1-6 and 15-20.

The Examiner has provisionally rejected Claims 1-6 under the doctrine of double patenting over Claims 21-27 of copending Application No. 09/262,751. This rejection is respectfully traversed. This is because Applicant has elected claims other than Claims 21-27 of the copending application, pursuant to a restriction requirement. Accordingly, the double patenting rejection has been rendered moot.

The Examiner has rejected Claims 1-6 under 35 USC § 112, second paragraph, for indefiniteness. This rejection is respectfully traversed.

In particular, the Examiner has asked whether the phrase "flexibly connected" in Claim 1 should be "flexible connecting." In response, Applicant notes that the protective bar is flexibly connected to the housing. Therefore, no indefiniteness exists.

Similarly, the Examiner has asked whether the phrase "flexibly connecting" in Claim 3 should be "flexible connecting." In response, Applicant notes that the connector assembly flexibly connects the protective bar to the housing. Therefore, no indefiniteness exists.

The Examiner has rejected Claims 1-6 under 35 USC § 103(a) as being unpatentable over US Patent No. 2,058,407 ("Brown"). This rejection is respectfully traversed.

Claim 1 calls for an audio equipment comprising a housing, audio circuitry installed within the housing, and a first protective bar flexibly connected to the housing.

Admittedly, Brown discloses a housing containing audio circuitry, and that the housing is connected to a leg assembly 14,15. However, this leg assembly is neither the protective bars called for in Claim 1, nor flexibly connected to the housing.

To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. MPEP § 2143.03 (citing *In re Royka*, 180 USPQ 580 (CCPA 1974)). "*All* words in a claim must be considered in judging the patentability of that claim against the prior art." *Id.* (quoting *In re Wilson*, 165 USPQ 494, 496 (CCPA 1970)) (emphasis added). In the present case, the Examiner has failed to show that the leg assembly is "protective."

As discussed in the specification, the protective bar is provided to protect the housing from being destroyed at a jobsite because of: (1) tools being dropped on the housing; or (2) the radio falling down. In Brown, however, the leg assembly does not serve to protect the radio. For example, Applicant notes that FIG. 5 of Brown shows no protection for the housing surrounding speaker 6a against any side blows.

Accordingly, the leg assembly only serves to support the radio in place. Therefore, the leg assembly is not a "protective" bar as called for in Claim 1. Thus, Brown cannot render Claim 1 and its dependent claims unpatentable.

Even if the leg assembly is considered a protective bar, it is not flexibly connected to the housing. Brown instead discloses a pivotal connection between the housing and the leg assembly. See col. 2, lns. 38-51. Thus, Brown does not teach or suggest a flexible connection between the protective bar and the housing. Such flexible connection is important as it provides "play" between the protective bar and the housing to absorb part of all of the shock occurring when the radio is dropped. Brown instead teaches a pivotal connection with little play and high friction, so that the radio can remain in a tilted position. See col. 2, lns. 43-51.

Nevertheless, the Examiner chose to ignore Brown's explicit teaching and relied on Fredman v. Harris-Hub Co., 163 USPQ 397 (N.D. Ill. 1969), for the flexible connection between the housing and the protective bar. However, the Examiner's reliance on Fredman is improper under MPEP § 2144.04.

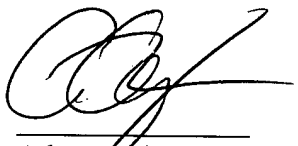
Under the MPEP, the Examiner may use the rationale used by the court "if the facts in a prior legal decision are sufficiently similar to those in an application under examination." However, the facts of the present case and Fredman are not similar. In

Furthermore, Collins does not disclose a flexible gasket, which is part of a connector assembly flexibly connecting the protective bar to the housing, as called for in Claims 4-5. The Examiner points to stop ring 30. This ring 30, however, does not constitute part of a connector assembly flexibly connecting the protective bar to the housing. Accordingly, Brown and Collins cannot render Claims 4-5 unpatentable.

In view of the foregoing, all the claims are patentable and the application is believed to be in condition for formal allowance. Reconsideration of the application and allowance of Claims 13 and 15-29 are respectfully requested.

No fee is due for the present amendment. Nevertheless, the Commissioner is authorized to charge payment of any fees due in processing this response, or credit any overpayment to Deposit Account No. 02-2548.

Respectfully submitted,



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First Named Inventor	Roger Q. Smith
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ENCLOSURES *(check all that apply)*

- ☐ Fee Transmittal Form
  - ☐ Fee Attached
- ☐ Amendment / Response
  - ☐ After Final
  - ☐ Affidavits/declaration(s)
- ☐ Extension of Time Request
- ☐ Express Abandonment Request
- ☐ Information Disclosure Statement
- ☐ Certified Copy of Priority Document(s)
- ☐ Response to Missing Parts/ Incomplete Application
  - ☐ Response to Missing Parts under 37 CFR 1.52 or 1.53
- ☐ Assignment Papers *(for an Application)*
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- ☐ After Allowance Communication to Group
- ☐ Appeal Communication to Board of Appeals and Interferences
- ☐ Appeal Communication to Group *(Appeal Notice, Brief, Reply Brief)*
- ☐ Proprietary Information
- ☐ Status Letter
- ☒ Other Enclosure(s) *(please identify below)*:
  Response to Office Action

Remarks

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm *or* Individual name	Adan Ayala
Signature	
Date	May 8, 2001

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231 on this date: May 8, 2001

Typed or printed name	Adan Ayala		
Signature		Date	May 8, 2001

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